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BEFORE THE ARIZONA CORPORATION COMMISSION

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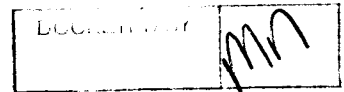
COMMISSIONERS

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Arizona Corporation Commission

LOCKETED

OCT 7 2008



In the matter of:

SCOTT HUTCHINSON and JANE DOE
 HUTCHINSON, husband and wife,
 individually and doing business as MARINE 3

DOCKET NO. S-20575A-08-0046

**SECURITIES DIVISION'S POST HEARING
 MEMORANDUM**

Respondents.

The Securities Division ("Division") of the Arizona Corporation Commission
 ("Commission") submits its post-hearing brief as follows:

I. PRELIMINARY ISSUES**A. Procedural History**

On January 25, 2008, the Division filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, for Restitution, for Administrative Penalties, and for Other Affirmative Action ("Notice"). The Notice alleged that Respondent Scott Hutchinson ("Hutchinson"), individually and doing business as Marine 3, engaged in acts, practices and transactions that constituted violations of the Securities Act of Arizona, A.R.S. §§ 44-1841, 44-1842, and 44-1991.

The Division served Hutchinson on February 28, 2008. On March 28, 2008, Hutchinson filed an Answer and Request for Hearing ("Answer").

1 An administrative hearing was held on September 9, 2008. Hutchinson did not appear
2 for the hearing, but was represented by counsel, Michael Salcido, who stipulated to the admission
3 of all of the Division's exhibits. **(Transcript p. 9:15-22).** Hutchinson did not mark or offer
4 admission of any Respondent exhibits. **(Transcript p. 3:1-19).**

5 **B. Jurisdiction**

6 Pursuant to A.A.C. R14-4-303(D)(1), Hutchinson was personally served with the
7 Notice. **(Affidavit of Service filed on 2/28/08).** Hutchinson, through his Answer, admits that, at
8 all times material to the facts set forth in the Notice, he was a resident of Arizona. **(Answer ¶ 2).**

9 The Commission has jurisdiction to enforce the provisions of the Securities Act of
10 Arizona (the "Act"), A.R.S. § 44-1801 *et. seq.* (See Article XV of the Arizona Constitution and
11 §44-1971 of the Act). The Act prohibits the sale or offer for sale of unregistered securities within
12 or from Arizona, A.R.S. § 44-1841; transactions involving the sale, purchase or offer to sell or buy
13 any securities by unregistered dealers or salesmen within or from Arizona, A.R.S. § 44-1842; and
14 the use of fraud in the offer to sell or buy securities, or in the sale or purchase of securities within
15 or from Arizona, A.R.S. § 44-1991.

16 In his Answer, Hutchinson admits that he sold stock in Marine 3 within or from
17 Arizona, that the stock he sold was not registered pursuant to Articles 6 or 7 of the Securities Act,
18 and that he was not registered as a dealer or salesman when he sold the stock within or from
19 Arizona. **(Answer ¶'s 2, 18, 19, 21).** Certificates of Non-Registration further establish that the
20 stock sold was not registered and that Hutchinson and Marine 3 were not registered as dealers or
21 salesmen. **(Hearing Exhibit S-3).**

22 **C. Facts**

23 1. At all times material hereto, Hutchinson was a resident of Arizona. **(Answer ¶2).**

24 2. At all times material, Hutchinson was not registered as a securities salesperson in
25 Arizona. **(Answer ¶2; Hearing Exhibit S-3).**

1 3. On July 25, 2005, Hutchinson offered and sold an unregistered security within or
2 from Arizona, in the form of stock in a Nevada company represented as Marine 3, to at least one
3 unsophisticated Arizona investor ("Investor") in the amount of \$35,000. **(Hearing Exhibits S-2,**
4 **S-3, S-4; Transcript p. 17:2-10, p. 52:9-12, p. 54:19-25; Answer ¶'s 18, 19).**

5 4. Marine 3 was incorporated in the State of Nevada on May 5, 2004. **(Hearing**
6 **Exhibit S-4).**

7 5. According to the corporate filings made on behalf of Marine 3 with the Nevada
8 Secretary of State, Hutchinson does not maintain any position within Marine 3 or have any
9 authority to act on behalf of Marine 3. **(Hearing Exhibit S-4).**

10 6. Hutchinson failed to inform the Investor that Marine 3's bylaws were never duly
11 adopted by the stockholders or Board of Directors of Marine 3, were not executed, do not include
12 the name of Marine 3, and fail to identify Hutchinson as having any authority to act on Marine 3's
13 behalf. **(Hearing Exhibit S-8 at ACC00069; Transcript p. 75:2-13).**

14 7. According to documents received by the Division from Hutchinson, through a
15 special meeting of the directors of Marine 3 held on May 13, 2004, he became director and
16 president of Marine 3. **(Hearing Exhibit S-7 at ACC 000057-59).**

17 8. Hutchinson represented to the Investor, prior to her investment, that he was the
18 president of Marine 3. **(Hearing Exhibit S-1; Transcript p. 15:20 to p. 16:1).**

19 9. Marine 3's corporate status was revoked by the State of Nevada on June 1, 2006.
20 **(Hearing Exhibit S-5).**

21 10. Hutchinson never informed the Investor that Marine 3's corporate status had been
22 revoked by the State of Nevada effective June 1, 2006. **(Transcript p. 31:13-15).**

23 11. Hutchinson informed the Investor, prior to her investment, that her investment
24 funds would be used for Marine 3's start up costs to sell boats. **(Transcript p. 19: 22-24, p. 56:2-**
25 **4, 13-16).**

1 12. Hutchinson represented to the Investor that there was no risk in the investment, that
2 the value of the stock could double or triple after Marine 3 went public and that the Investor was
3 guaranteed to receive, at a minimum, a return of her initial investment amount (\$35,000) in early
4 2006. (Transcript p. 14:2-13, p. 31:16-18, p. 52:23 to p. 53:2).

5 13. Hutchinson informed the Investor, that Marine 3 would be merging with another
6 company, Dream Marketing, with both companies then going public. (Transcript p. 19:25 to p.
7 20:2, p. 20:23-25, p. 21:4-11).

8 14. Hutchinson utilized a laptop and a binder of material in presenting the investment
9 opportunity in Marine 3. (Transcript p. 12:3-11).

10 15. Hutchinson did not provide any financial information to the investor with regard to
11 Marine 3. (Transcript p. 12:25 to p. 13:2).

12 16. On July 25, 2005, Hutchinson issued stock certificate #5 for 600 shares in Marine 3
13 to the Investor in exchange for \$35,000. (Answer ¶9; Hearing Exhibit S-1; Transcript p. 15:9
14 to p. 17:15).

15 17. Hutchinson instructed the Investor to make her investment by writing seven checks
16 payable to Hutchinson in the amount of \$5,000 each. (Transcript p. 18:24 to p. 19:9; Hearing
17 Exhibit S-2).

18 18. Hutchinson proceeded to the Investor's bank on July 29th, August 1st, August 3rd,
19 and August 5th to cash the Investor's seven checks totaling \$35,000. (Hearing Exhibit S-2;
20 Transcript p. 82:19 to p. 84:17).

21 19. To date, Investor has not received any return on her investment and has not received
22 back her principal investment amount. (p. 56:17 to p. 57:6).

23 ...

24 ...

25 ...

26 ...

II. SECURITIES & UNREGISTERED ACTIVITIES

A. Offer and sale of an unregistered security by an unregistered securities salesperson

Pursuant to A.R.S. § 44-1801(26), stock is clearly included in the definition of a security. As indicated above, Hutchinson does not dispute that he sold a security in the form of stock to the Investor. He also does not dispute that he was not a registered security salesperson in Arizona. In his answer, Hutchinson represents that the stock he sold was exempt from registration, apparently pursuant to A.R.S. § 44-1844(4), because it was owned by him. (Answer ¶s 6, 18, 21, 27).

Ariz. Rev. Stat. § 44-2033 requires that Hutchinson carry the burden of proving the existence of any claimed exemption. To be entitled to the exemption set forth in A.R.S. § 44-1844(4), Hutchinson was required to establish that he was the bona fide owner of the security sold to the Investor. Hutchinson failed to present any evidence that he owned any stock, including the stock sold to the Investor. (Transcript p. 77:3-7). In fact, at the hearing, Hutchinson did not even attempt to carry the burden of establishing that he was entitled to any exemption. (Transcript p. 8:21 to p. 9:11). Finally, A.R.S. § 44-1844(4) excludes an issuer or underwriter and the evidence presented is that Hutchinson is the issuer of the stock and, as a result, not entitled to the exemption contained within A.R.S. § 44-1844(4).

B. Fraud in the offer or sale of securities

Fraud, including untrue statements of material fact and omissions, in the offer or sale of securities violates A.R.S. § 44-1991. As it relates to fraud, the standard of materiality of omitted facts is whether a reasonable investor would have wanted to know. *Rose v. Dobras*, 128 Ariz. 209, 214, 624 P.2d 887, 892 (1981). Further, unlike common law fraud, reliance upon a misrepresentation is not an element in fraud involving the purchase or sale of securities. *Id.*

The evidence presented in this matter sets forth clearly the following fraud committed by Hutchinson:

1 1. Hutchinson represented to the Investor that her investment funds would be used for
2 Marine 3's start up costs to sell boats. **(Transcript p. 19:22-24, p. 56:2-4, 13-16).** The Securities
3 Division's investigation has found no evidence that the Investor's funds were used for Marine 3's
4 start up costs or that Marine 3 ever began selling boats. The evidence is that Hutchinson requested
5 that the Investor make her checks payable to Hutchinson and that he cashed the checks.
6 **(Transcript p. 18:24 to p. 19:9, p. 82:19 to p. 84:17; Hearing Exhibit S-2).** Hutchinson failed
7 to respond to the Division's subpoenas with documentation setting forth how the Investor's funds
8 were spent, despite the unambiguous requests made by the Division for that information.
9 **(Hearing Exhibit S-6, S-7, S-8).**

10 2. Hutchinson misrepresented to the investor that there was no risk in the investment
11 and omitted to present the substantial risks that exist with any investment involving stock,
12 including the potential for loss of the entire investment. **(Transcript p. 14:2-6).** Hutchinson
13 should also have informed the Investor of the risks associated with attempting to take a company
14 public since the profits promised to the Investor by Hutchinson along with the date of repayment
15 of her principal investment, were contingent upon Marine 3 becoming a publicly held company.
16 **(Transcript p. 14:7-16).**

17 3. Hutchinson misrepresented to the Investor that she was guaranteed to receive, at a
18 minimum, a return of her initial investment amount (\$35,000) by early 2006. **(Transcript p. 14:7-**
19 **13, 31:16-18, p. 52:23 to p. 53:2).** To date, Investor has not received a refund of her principal
20 investment amount and Hutchinson represents that he does not have the Investor's funds to return
21 to her. **(Transcript p. 56:17 to p. 57:6, p. 9:1-2).** To be in a position to return Investor's funds to
22 her by early 2006 would have required Marine 3 to complete the process of becoming a public
23 company within about 6 months. **(Transcript p. 31:16-18, p. 52:23 to p. 53:2).**

24 4. Hutchinson failed to disclose to the Investor the basis for his instruction to her to
25 write seven checks payable to Hutchinson, each in the amount of \$5,000. Hutchinson failed to
26 inform the Investor that he would cash the investment checks on separate dates at the Investor's

1 bank, rather than deposit them in a Marine 3 business account. As a result of Hutchinson simply
2 cashing the Investor's checks, he created a situation whereby the cash he received could not be
3 traced.

4 5. Hutchinson failed to disclose to the Investor that the only documents filed with the
5 Nevada Secretary of State, on behalf of Marine 3, do not include any reference to Hutchinson, let
6 alone as president of Marine 3 with authority to act on behalf of Marine 3 to issue stock. **(Hearing**
7 **Exhibit S-4, Transcript p. 73:18 to p. 75:2).**

8 6. Hutchinson failed to inform the Investor that Marine 3's bylaws do not indicate that
9 they were ever executed or duly adopted by the stockholders or Board of Directors of Marine 3,
10 facts that a reasonable investor would have wanted to know prior to investing. **(Hearing Exhibit**
11 **S-8 at ACC000069; Transcript p. 75:2-13).**

12 **C. Conclusion**

13 The evidence presented at the hearing establishes that Hutchinson, without being
14 registered as a securities salesperson, sold at least one unregistered security, within or from
15 Arizona, to at least one unsophisticated Arizona investor beginning from at least July 25, 2005.
16 Pursuant to A.R.S. § 44-2036(A), Hutchinson can be ordered to pay an administrative penalty of
17 up to five thousand dollars (\$5,000) for each violation of the Act. The violations include
18 Hutchinson's sale of an unregistered security, as an unregistered securities salesperson, and the six
19 material frauds set forth above. Based upon the nature of Hutchinson's material
20 misrepresentations and omissions, the maximum administrative penalty amount of five thousand
21 dollars (\$5,000) per violation is justified.

22 Based upon the evidence presented, the Division respectfully requests this tribunal to:

23 A. Order Hutchinson to cease and desist from further violations of the Act pursuant to
24 A.R.S. § 44-2032;

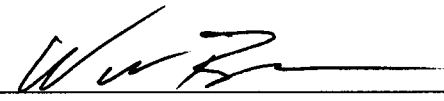
25 B. Hutchinson's unwillingness to supply documents and/or appear before the Division
26 to provide an explanation of his activities makes it virtually impossible for the Division to identify

1 stockholders issued stock certificates 1, 2, 3, and 4 and any other additional investors. As a result,
2 the Division requests that Hutchinson be ordered to pay restitution, pursuant to A.R.S. § 44-
3 2032(1), to all investors as shown on the books and records of the Division in an amount not less
4 than \$35,000 to allow for restitution to those investors, if any, who may come forward upon
5 learning of any order issued by the Commission in this matter;

6 C. Order Hutchinson, pursuant to A.R.S. § 44-2036(A), to pay an administrative
7 penalty of not less than \$40,000;

8 D. Order any other relief this tribunal deems appropriate or just.

9 Dated this 7th day of October, 2008.

10
11 
12 William W. Black, Esq.
13 for the Securities Division

14 ORIGINAL AND THIRTEEN (13) COPIES
15 of the foregoing filed this 7th day of October,
2008, with:

16 Docket Control
17 Arizona Corporation Commission
18 1200 West Washington
Phoenix, AZ 85007

19 COPY of the foregoing mailed and e-mailed
20 this 7th day of October, 2008 to:

21 Administrative Law Judge Belinda A. Martin
22 Arizona Corporation Commission/Hearing Division
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